

MOTOR VEHICLE DEALER BOARD

MOTOR VEHICLE DEALER ADVERTISING PRACTICES AND ENFORCEMENT REGULATIONS

REVISED: October 1, 1998

24 VAC 22-30-10 et seq. Motor Vehicle Dealer Advertising Practices and Enforcement Regulations.

Statutory Authority: § 46.2-1581 of the Code of Virginia.

Effective Date: October 1, 1998

CHAPTER 30.

MOTOR VEHICLE DEALER ADVERTISING PRACTICES AND ENFORCEMENT REGULATIONS.

PART I.

GENERAL PROVISIONS.

24 VAC 22-30-10. Intent.

In the 1989 Acts of the Virginia General Assembly it was found that it is in the interest of the consuming public and legitimate motor vehicle dealers to ensure that the advertising of motor vehicles is honest, fair, and clear and that deceptive or misleading advertising of the retail sales of motor vehicles as described in Motor Vehicle Dealer Advertising, Article 9 (§ 46.2-1580 et seq.) of Chapter 15 of Title 46.2 of the Code of Virginia should be prohibited. In the 1995 Acts of the Virginia General Assembly it was found that it is in the interest of the consuming public and legitimate motor vehicle dealers for dealers to be regulated by a board of their peers, resulting in the formation of the Virginia Motor Vehicle Dealer Board. Therefore, the following regulations are promulgated by the board to administer the administrative and civil penalties necessary for enforcement of prohibited advertising practices.

24 VAC 22-30-20. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

"Act" means Chapter 15 (§ 46.2-1500 et seq.) of Title 46.2 of the Code of Virginia.

"Administrative penalties" means the denial, suspension or revocation of a license as allowed in § 6.2-1576 of the Act and based on one or more of the grounds specified in § 46.2-1575 of the Act.

"Advertiser" means same as licensee.

"Advertisement" means an oral, written, graphic or pictorial statement made in the course of soliciting business, including, without limitation, a statement or representation made in a newspaper, magazine, or other publication, or contained in a notice, sign, poster, display, circular, pamphlet, or letter, or on radio, the Internet, or via an on-line computer service, or on television. The term does not include an in-person oral communication by a dealer's employee with a prospective customer.

"Board" means the Motor Vehicle Dealer Board of this Commonwealth.

"Civil penalty" means the monetary assessment imposed by the board or the executive director against a licensee not to exceed \$1,000 for any single violation of § 46.2-1581 of the Code of Virginia.

"Disclaimer" means those words or phrases used to provide a clear understanding or limitation to an advertised statement but not used to contradict or change the meaning of the statement.

"Disclosure" means a statement in clear terms of the dollar amounts, time frames, down payments and other terms which may be needed to provide a full understanding of credit terms, periodic payment, interest rates, time payment plans, etc.

"Executive director" means the Executive Director of the Motor Vehicle Dealer Board of this Commonwealth.

"Internet" means the international network of computer systems commonly known as the "internet."

"License" means the document issued to a Virginia motor vehicle dealer and which permits such dealer to engage in the business of buying and selling new and used motor vehicles or used motor vehicles only.

"Licensee" means any person, partnership, association, corporation or entity which is required to be licensed as a motor vehicle dealer in this Commonwealth.

"Line-make marketing group" means an association of motor vehicle dealers franchised to sell and advertise the same line-make of new motor vehicles.

"New motor vehicle" means a vehicle which meets all of the following criteria. The new motor vehicle has:

1. Had limited use necessary in moving or road testing the vehicle prior to delivery to a customer;
2. Been transferred by a manufacturer's or distributor's certificate of origin which is the document provided by the manufacturer of a new motor vehicle, or its distributor to its franchised motor vehicle dealer;
3. The manufacturer's or distributor's certification that it conforms to all applicable federal motor vehicle safety and emission standards;
4. Not been previously sold by a dealer except for the purpose of resale and when the exchange is between franchised dealers of the same line-make;
5. Not been used as a rental, driver education, or demonstration motor vehicle; and
6. Not been used for the personal and business transportation of the manufacturer, distributor or dealer or any of their employees.

"On-line service" means any information service, system, or access software provider that enables computer access by multiple users to a computer server, including specifically a service or system that provides accesses to the internet.

"Repossessed vehicle" means a vehicle which meets all of the following criteria. It has:

1. Been sold, titled, registered, and taken back from a purchaser for nonpayment; and
2. Not yet been resold to an ultimate user.

"Sale" means there is a significant reduction from the advertiser's usual and customary price of a motor vehicle and the offer is for a limited period of time.

"Used motor vehicle" means any vehicle other than a new motor vehicle as defined in this chapter.

PART II. REGULATED ADVERTISING PRACTICES

24 VAC 22-30-30. Practices.

For purposes of this chapter, a violation of the following regulated advertising practices shall be an unfair, deceptive, or misleading act or practice.

A. New motor vehicle. A motor vehicle shall not be advertised as new, either by word or implication, unless it is one which conforms to the definition of a "new motor vehicle" as defined in 24 VAC 22-30-20.

B. Used motor vehicle.

1. The fact that a motor vehicle is used should be clearly and unequivocally expressed by the term "used" or by such other term as is commonly understood to mean that the vehicle is used. For example, "special purchase" or "program cars" by itself is not a satisfactory disclosure; however, such terms as "demonstrator" or "former leased and/or rental vehicles" used alone clearly express that they meet the definition of a used vehicle for advertising purposes. When in doubt, the dealer should provide more information or simply say "used."

2. Once a certificate of origin as defined in § 46.2-1500 has been assigned to a purchaser, the motor vehicle becomes a used vehicle and must be advertised as such.

C. Finance charges or interest rates advertisements.

1. Advertisements of finance charges or other interest rates "below market" (or words to that effect) shall not be used unless it is manufacturer or distributor sponsored or substantiated by a written agreement with the finance source.

2. Advertisement of finance charges or other interest rates shall not be used when there is a cost to buy-down said charge or rate which is passed on, in whole or in part, to the purchaser.

D. Terms, conditions, and disclaimers.

1. When terms, conditions or disclaimers are used, they shall always be stated clearly and conspicuously. An asterisk or other reference symbol may be used to point to a disclaimer or other information; but, the disclaimer shall not be used as a means of contradicting or changing the meaning of an advertised statement. In addition, they must meet the Federal Trade Commission Truth in Lending Act Requirements 15 USC §§ 1601 et seq., 12 CFR 226 (Regulation Z) or the Federal Trade Commission Truth in Leasing Act Requirements, as applicable.

2. In all printed media, where terms, conditions or disclaimers are used, they shall be clearly and conspicuously visible and printed in not less than 8-point type print or printed in 6-point upper case type print. If a processing fee or freight or destination charges are not included in the advertised price, the amount of any such processing fee and freight or destination charge must be clearly and conspicuously disclosed in not less than eight-point boldface type or not smaller than the largest typeface within the advertisement. If the processing fee is not included in the advertised price, the amount of the processing fee may be omitted from any advertisement in which the largest type size is less than eight-point typeface, so long as the dealer participates in a media-provided listing of processing fees and the dealer's advertisement

includes an asterisk or other such notation to refer the reader to the listing of the fees. When billboards, portable signs, posters, etc., are used, all terms, conditions or disclaimers need to be displayed and phrased in a manner which is clear and conspicuous.

3. In radio advertisements, where terms, conditions or disclaimers are used, they shall be clearly announced during the advertisement. They must be explained clearly and at an understandable speed and volume level.

4. In television advertisements, where terms, conditions or disclaimers are used, they shall be clearly and conspicuously displayed or announced, or both, during the advertisement. They shall be at an understandable speed or understandable volume level, or both.

E. Sale or sales. The expiration date of an advertised "sale" shall be clearly and conspicuously disclosed. If the sale exceeds 30 days, the advertiser should be prepared to substantiate that the offering is indeed a valid reduction and has not become his regular price.

F. "List price," "sticker price," "suggested retail price." These terms and similar terms shall be used only as follows:

1. In reference to the manufacturer's or distributor's suggested retail price for new vehicles; or
2. The dealer's own usual and customary price for used vehicles.

G. "Cost" and "invoice price" terms.

1. "At cost," "below cost," "\$ off cost" shall not be used in advertisements because of the difficulty in determining a dealer's actual net cost at the time of sale.

2. "Invoice price," "\$ over invoice," may be used, provided that the invoice referred to is the manufacturer's factory invoice, distributor's invoice, or a bona fide bill of sale, as applicable, and that it is available for customer inspection.

3. "Manufacturer's factory invoice" or "distributor's invoice" means that document supplied by the manufacturer or the distributor listing the manufacturer's or distributor's charge to the dealer before any deduction for items such as holdback, group advertising, factory incentives or rebates, or any governmental charges.

H. Price or credit terms of advertised vehicles. When the price or credit terms of a vehicle are advertised in print, radio, or television, the vehicle should be fully identified as to year, make, and model. In addition, in all advertisements placed by individual dealers and not marketing groups, the advertised price or credit terms shall include all charges which the buyer must pay to the seller including "freight" or "destination charges." If there are deferred payments on credit sales where accrued finance charges are ultimately charged to the consumer for any part of the deferred period, then these charges must be clearly stated. State and local fees and taxes and buyer-selected options need not be included in the advertised price. If the buyer will be required to pay to the seller charges which increase the advertised price, the charges must be disclosed as set-out in subsection D of this section and priced in the advertisement.

I. Matching or bettering competitor's price advertisements. Advertisements which set out a policy matching or bettering a competitor's price shall not be used unless the terms of the offer are specific, verifiable, and reasonable. All terms of the offer shall be included in the disclosure and disclaimer area and may not say such things as "rules or terms available in showroom" or "available before delivery." Any material or significant conditions which must be met or the evidence the consumer must present to take advantage of the offer must be fully disclosed as a part of the advertisement.

J. Advertisements of dealer rebates shall not be used. Offers to match down payments or guarantee minimum trade-in allowances or offers of cash or money back are forms of dealer rebates.

K. "Free," "at no extra cost" terms. No equipment, accessory, other merchandise or service shall be described using any term that implies that such equipment, accessory, other merchandise or

service is free if a purchase is required in order to receive the "free" offer. Examples of prohibited terms include:

1. Free
2. Complimentary
3. At no extra cost
4. At no extra charge
5. At no extra fee
6. At no extra price
7. At no additional cost
8. At no additional charge
9. At no additional fee
10. At no additional price
11. Present
12. Gift
13. On the house
14. Gratis
15. Courtesy

L. "Bait advertising" shall not be used.

1. The purpose of this section is to ensure that customers will be informed the vehicle is in limited quantity or availability. If a specific vehicle is advertised, the seller shall be in possession of a reasonable supply of said vehicles and they shall be available at the advertised price. If the advertised vehicle is available only in limited numbers or only by order, that shall be stated in the advertisement. The listing of vehicles by stock numbers or vehicle identification numbers is permissible and is one means of satisfactorily disclosing a limitation of availability, provided a separate number is used for each vehicle. For new vehicles, if the offer is limited, you will be able to say such things as "in stock" or "will order" provided you can order the vehicle just as advertised and delivery can be assured as soon as the manufacturer or distributor can confirm the order and deliver it to your dealership. If you cannot get an order confirmation within 30 days, you must refund all moneys collected from the buyer at his request. If the vehicle is available only by order then it must be clearly and conspicuously disclosed in the advertisement.
2. Advertising a vehicle at a certain price (including "as low as" statements), but having available for sale only vehicles equipped with dealer added cost "options" which increase the selling price above the advertised price, may also be considered "bait advertising."
3. If a lease payment is advertised, the fact that it is a lease arrangement shall be disclosed.

M. The term "repossessed vehicle" shall not be used unless the full criteria of the definition in 24 VAC 22-30-20 is met. Advertisers offering such vehicles for sale shall provide proof of repossession upon request.

N. "Finance" or "loan." Words such as "finance" or "loan" shall not be used in a motor vehicle dealer advertiser's firm name or trade name unless that person is actually engaged in the financing of motor vehicles.

O. "Special arrangement or relationship" advertisements. Statements such as "big volume buying power," "manufacturer's outlet," "factory authorized outlet," and "factory wholesale outlet," shall not be used. Any term that gives the consumer the impression the dealer has a special arrangement with the manufacturer or distributor as compared to similarly situated dealers, is misleading and shall not be used.

P. Records retention. Advertisers shall maintain and make available to the Board and the Board staff, if requested, the original or a clear facsimile copy of all advertisements in a manner that

permits systematic retrieval for a period of 60 days subsequent to the expiration date of the advertisement.

PART III. ENFORCEMENT.

24 VAC 22-30-40. Administrative and civil penalties.

A. Violations of any regulated advertising practice may, in the discretion of the board or executive director, be addressed by a written warning to the licensee as an initial step in the enforcement process.

B. Any single violation of a regulated advertising practice may also, after an informal fact finding proceeding as provided in the Administrative Process Act, § 9-6.14:1 et seq. of the Code of Virginia, result in an assessment of a civil penalty up to \$1,000.

C. Subsequent, same or similar violations may, after an informal fact finding proceeding as provided in the Administrative Process Act, § 9-6.14:1 et seq. of the Code of Virginia, result in an assessment of a civil penalty up to the \$1,000 and may also be grounds for denying, suspending or revoking a license subject to the hearing requirements pursuant to § 46.2-1576 of the Act, either or both.

24 VAC 22-30-50. Appeals.

The action of the board in suspending, revoking or refusing any license or in imposing a monetary civil penalty against the licensee shall be subject to judicial review as provided in §§ 46.2-1577 and 46.2-1578 of the Act.

24 VAC 22-30-60. Other enforcement.

This chapter and the provisions of Article 9 (§ 46.2-1580 et seq.) of Chapter 15 of Title 46.2 of the Code of Virginia shall be in addition to and not a substitute for the powers and authority granted pursuant to the provisions of the Virginia Consumer Protection Act (§ 59.1-196 et seq.) or of any other provision of the Code of Virginia.